

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2563 OF 2004

SIMCO Industries Limited & Anr. ... Petitioners

V/s

M/s Lloyds Finance Limited & Anr. ... Respondents

Mr. M.L. Bansal for petitioner

Mr. Subhash Jha, Jimesh Shah & Gaurav Agarwal i/b M/s Law
Global Adv. for respondent No.1

Mr. A.S. Shitole, APP for the State

Coram : V.M. Kanade, J.

Dated : 30/03/2005

P.C. :-

. I have heard the learned counsels for the
petitioner, respondent No.1 and APP for the State.

. By this petition which is filed under article 227
of the Constitution of India and section 482 of Code of
Criminal Procedure the petitioners are seeking an order of
this court for quashing the complaint C.C.No.7/Misc./2002
and (MECR No.2/2003) pending in the court 8th Metropolitan
Magistrate, Esplanade, Mumbai.

. The complaint was filed by the respondent No.1 in
the court of Metropolitan Magistrate who was pleased to
direct the police to investigate the matter under section
156(3) of the Code of Criminal Procedure. The Director of
the company Mr. Naval Kishore Goenka was arrested by the
Cuffe Parade Police Station and was subsequently released
on bail by the Session Court. Both parties have filed

consent terms in the session court on 17/02/2004. As a result of which dispute which was the subject matter of the complaint between the parties was settled. In the consent terms it was agreed that the petitioner would make payment of Rs.75 lacs as stipulated in the consent terms. After the said amount was paid to respondent No.1, he wrote a letter dated 29/7/2004 to the Senior Inspector of Police requesting him to drop the proceeding which was initiated by the Cuff Parade Police Station on the order passed by the Magistrate. The application was also preferred before the court of Additional Chief Metropolitan Magistrate. However, since the complaint cannot be compounded as per provisions of section 320 of Code of Criminal Procedure as the Magistrate does not have power to compound the offence though there is settlement between the parties and, therefore, the said application was rejected by the learned Magistrate. Thereafter the present petition has been filed for quashing the complaint.

. The learned counsel appearing on behalf of the petitioners has brought to my notice that a special committee was appointed by the High Court in a company petition filed against the respondent company. The committee has considered the question of withdrawal of complaint filed against SIMPCO Industries Ltd. The committee consisting of Justice V.R.Datar(Retd.), Chairman, Mr. S.C. Malhotra, IPS, D.G. Of Police (Retd.) Maharashtra, Member and Mr. P.K. Bansal, IPS, D.G. Of Police (Retd.)Gujrat, Member has passed a resolution

directing the company to write a letter informing the police to withdraw the complaint.

It is well settled position in law that the Magistrate does not have power to compound an offence which is otherwise non-compoundable while exercising its power under section 320 of Code of Criminal Procedure. The said provision however does not curtail the inherent powers of the High Court under section 482 of Code of Criminal Procedure. The apex court in the case of B.S.Joshi & Ors. vs. State of Haryana & Anr. reported in J.T. 2003(3) S.C.277. has observed in para-15 as under.

“In view of above discussion, we hold that High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaints and section 320 of the Code does not limit or affect the powers under section 482 of the Code”.

Under these circumstances, C.C.No.7/Misc./2002 which is now re-numbered 57/PW/2004 and is pending in the court of 47th Metropolitan Magistrate, Esplanade Mumbai is quashed. The order passed by the Magistrate directing the police to investigate in the complaint under sec.156 (3) and FIR which is lodged pursuant to the said investigation is also quashed. Criminal Writ Petition is allowed in above terms.

(V.M. Kanade, J.)

